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June 1, 2004

EX PARTE COMMUNICATION

Marlene H. Dortch, Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W., TW-A325
Washington, DC 20554

**Re: Data Reporting Issues, Pay Telephone Reclassification and Compensation
 Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128**

Dear Ms. Dortch:

On behalf of the American Public Communications Council ("APCC"), this letter responds to the ex parte submissions of AT&T, MCI, and Verizon regarding APCC's request for a ruling that carriers must include information on uncompleted calls and call duration in the call data accessible to payphone service providers ("PSPs") in connection with dial-around compensation payments. See Declaration of Michael Guerra ("Guerra Dec."), enclosed with Letter to Marlene H. Dortch, Secretary, FCC, from Martha Lewis Marcus, Senior Attorney, AT&T, filed April 27, 2004; Declaration of Dianne Moore ("Moore Dec."), enclosed with Letter to Marlene H. Dortch, Secretary, FCC, from Larry Fenster, Senior Economist, MCI, filed May 7, 2004; Declaration of David J. Gudino ("Gudino Dec."), enclosed with Letter to Marlene H. Dortch, Secretary, FCC, from Ann D. Berkowitz, Associate Director, Federal Regulatory Advocacy, Verizon, filed May 21, 2004. See also APCC, Petition for Clarification or Partial Reconsideration, filed December 8, 2003, at 20-22 ("APCC Petition").

**I. THE EX PARTE SUBMISSIONS DO NOT PROVIDE ANY REASON TO
 DENY APCC'S REQUEST FOR CALL DURATION DATA**

In its Petition for Reconsideration, APCC requested a clarification of Section 64.1310(g), 47 CFR § 64.1310(g), to make clear that the call verification information that Intermediate Carriers and Completing Carriers are required to maintain must include data indicating the duration of calls. APCC Petition at 21-22.¹

¹ This provision already expressly requires that call verification data include "the time and date that each call was made." 47 CFR § 64.1310(g). Call duration data could be effectively provided *either* by recording the actual duration of the call *or* by providing two time-and-date entries – the time of initiation and the time of termination.

A. None of the Submissions Opposes Requiring Intermediate Carriers to Provide Call Duration Data Upon Request

None of the carriers' ex parte submissions presents any information or arguments against requiring *Intermediate Carriers* to make call duration data available on request. The submissions of MCI and Verizon do not address call duration data at all, and AT&T's submission only opposes "requir[ing] *Completing Carriers* to provide records to PSPs on call duration." Guerra Dec., ¶ 11 (emphasis added).

Call duration data obtained from Intermediate Carriers is critical in evaluating payments received from switched-based resellers ("SBRs"). PSPs could use call duration data to match up (1) records obtained from an Intermediate Carrier on relatively long-duration payphone calls that were delivered to a particular SBR with (2) records obtained from the SBR on calls received from the Intermediate Carrier from the same payphones in the same time period. Such comparisons would enable PSPs to identify patterns of potential tracking errors, based on the probability that, if many long-duration calls are omitted from a SBR's records of completed calls, the SBR's tracking system is not functioning correctly.

No party has refuted the need for call duration information from the Intermediate Carrier, or shown that it would be unduly burdensome to provide.² Accordingly, there is no obstacle to granting APCC's petition for reconsideration in this respect.

B. AT&T Provides No Basis for Completing Carriers to Withhold Call Duration Data on Completed Calls

Although AT&T does oppose a requirement for *Completing Carriers* to provide call duration data, AT&T does not claim that it would be burdensome for Completing Carriers to provide call duration information for calls that are recorded as *completed* calls. Indeed, Mr. Guerra expresses a willingness to provide PSPs with information on call duration in response to disputes. Guerra Dec., ¶ 15. The alleged administrative burden described in Mr. Guerra's declaration relates only to the Completing Carrier's provision of data on *uncompleted* calls. *Id.*, ¶ 12. As with Intermediate Carriers (see note 2 above), the rule already explicitly requires Completing Carriers to maintain call verification data, including the date and time of the call, for every completed call. Providing call duration data for completed calls should not be significantly more

² As noted above, the rule already explicitly requires Intermediate Carriers to maintain call verification data, including the date and time of the call, for every call delivered to a SBR. Providing call duration data should not be significantly more burdensome than providing the date and time of a call, since the calls are "completed" from the Intermediate Carrier's perspective and both pieces of information must be maintained for purposes of billing the SBR.

burdensome than providing date-and-time information for completed calls, since both pieces of information must be maintained for purposes of billing end users.

* * *

The Commission should remind carriers, however, that the call verification information they are required to maintain must be provided to PSPs “upon request” and not at the carrier’s discretion. A significant question as to whether carriers are properly interpreting this provision is raised by Mr. Guerra’s comment that “in the event of a *legitimate* payment issue, AT&T will make time and date stamp information available *on an as needed basis* to assist in resolving a dispute.” Guerra Dec., ¶ 11 (emphasis added). This statement suggests that AT&T believes it has discretion to provide or withhold verification data, including the time-and-date information that the rule expressly requires carriers to provide on request, based on AT&T’s subjective judgment as to whether there is a “legitimate payment issue” and whether the information is “needed” to resolve the issue. The rule contains no such qualifications of the carrier’s obligation. Verification data “must be provided to the [PSP] upon request,” period.³

II. “UNCOMPLETED” CALL DATA

APCC has also requested that the Commission require Completing Carriers to provide reports and (at PSP request) verification information on calls that the Completing Carrier has recorded as uncompleted calls. See APCC Petition at 20-21.⁴ This request is the primary target of the ex parte submissions of AT&T, MCI, and Verizon.

³ In the past, carriers have refused to provide call detail to PSPs outside of litigation. Based on past performance, therefore, it cannot be presumed that carriers will be liberal in their determinations of when information is “needed” to resolve a “legitimate payment issue.” PSPs can be relied upon to avoid frivolous requests for information because, as Mr. Guerra points out, they will incur significant costs in transferring and storing such information. *Id.*, ¶ 12.

⁴ Verizon’s David Gudino argues that a carrier can be called a Completing Carrier only for completed calls, not uncompleted calls, and that accordingly it makes no sense to require a Completing Carrier to identify uncompleted calls. Gudino Dec., ¶ 9. This is pure sophistry: It is like saying that a finishing carpenter can only be a finishing carpenter for houses that he or she actually did finish “finishing,” and not for houses that he or she failed to finish “finishing.” In any event, if the Commission is concerned about this argument, it can simply replace the term “Completing Carrier” with “Completing/Uncompleting Carrier,” defined as “the carrier that will have completed the call if the call is answered by the called party.”

A. Audits do not guarantee that call tracking systems are infallible

The carriers recite all the steps they are already required to take under the revised compensation rule, implying that, because there are so many requirements already, additional requirements could not possibly be necessary to ensure fair compensation. For example, AT&T, MCI, and Verizon all rely on the argument that, because carriers' call tracking systems must be audited, the audits alone should suffice to ensure that all compensable calls have been counted. Guerra Dec., ¶ 10; Moore Dec., ¶ 11; Gudino Dec., ¶ 11. The carriers' notion seems to be that, just because carriers' call tracking systems have been audited, they should be presumed infallible.

This reasoning is transparently fallacious. According to the carriers' logic, the fact that a corporation's books may have been audited should eliminate any risk of accounting errors or fraud and obviate the need for other safeguards. But, unfortunately, as recent experience in the telecommunications arena demonstrates, that is not the case. Audits of corporate books are a necessary safeguard, but, have proven to be hardly sufficient to fully to protect shareholders from fraud or mismanagement.

The same is true for PSPs. Audits, while important, cannot possibly suffice to prevent payphone call tracking and payment errors, because the safeguards and incentives that normally operate to ensure accurate payments in commercial transactions are wholly absent here.

First, the FCC rules assign call tracking responsibility to the carrier. Thus, contrary to normal commercial practice, it is the carrier "customer," not the PSP "supplier," who operates the "meter" that measures compensable calls and who generates the itemized bills that determine the amount the carrier will pay. PSPs sometimes have alternative sources of information from their own records or LEC records. Even when available, however, those information sources generally do not, without significant expense and elaborate procedures, enable PSPs to differentiate between completed and uncompleted calls.

Second, there are no significant *market* incentives for carriers to ensure that their call tracking systems capture all compensable calls.⁵ Under Section 226 of the Act, 47

⁵ Ms. Moore states that "MCI has prided itself on the reliability of its payphone compensation system." Moore Dec., ¶ 4. MCI's compensation system may indeed be more reliable than the systems of other facilities-based carriers. Nevertheless, on a number of occasions MCI's payphone compensation system has been found inadequate to its task. For example, MCI did not begin to provide the calling data required by the Interim Rule until months after the rule originally took effect. It is also noteworthy that, in the six-and-a-half years since carriers were first required to track calls, MCI's compensation system has never maintained records of the date and time of calls – information that is surely fundamental to a carrier's ability to verify the accuracy of its call tracking. Only now that the FCC requires the information to be maintained is MCI finally adding date and time data to its compensation data base. Moore Dec., ¶ 7.

U.S.C. § 226(c), a PSP has no option to refuse to serve its carrier “customer.” It is not even feasible for a PSP to terminate service to its “customer” if the PSP is not satisfied that the customer has paid the full amount of compensation due.

In the absence of normal commercial safeguards, it cannot be presumed that, merely because the call tracking systems of major facilities-based carriers have undergone audits, those systems are error-free.

B. To Verify Their Compensation, PSPs Need Information On Calls That The Carrier Has *Not* Recorded As Completed Calls

The carriers’ assumption that their call tracking systems never make errors leads them to make rather fatuous arguments. For example, Mr. Gudino contends that PSPs cannot benefit from uncompleted call data because “PSPs are not entitled to any compensation for uncompleted calls.” Gudino Dec., ¶10. This statement assumes that the only information a PSP needs is information about calls that the carrier has already identified as completed and compensable. If carriers’ call tracking systems were infallible, of course, then PSPs would not need any additional information, because a count of calls deemed compensable would suffice to reassure the PSP that the carrier has correctly calculated the amount due. The purpose of the data disclosure rules, however, is not merely to reassure PSPs, but to help them actually *verify* whether a carrier whose call tracking system is *not* infallible has or has not identified all compensable calls. See *Order*, ¶¶ 45 (call information is “relevant and necessary for resolving” disputes).

Disputes between carriers and PSPs usually involve calls that carriers did *not* identify as compensable – either because the carrier’s call tracking system identified the calls as uncompleted calls or because it did not identify the calls as payphone-originated calls. Data on calls recorded by a carrier as uncompleted would assist PSPs in a number of ways to identify tracking errors that may result in exclusion of a substantial number of compensable calls.

For example, PSPs could compare a Completing Carrier’s reports of completed call volumes with its reports of uncompleted call volumes,⁶ in order to determine whether there are unusually low completed call ratios associated with certain payphones or certain toll-free numbers. By obtaining verification information (including the duration of uncompleted calls) for specific categories of calls with low completed call ratios. PSPs could test whether the duration of the calls recorded as uncompleted appears unusually long for uncompleted calls. A large number of long-duration “uncompleted” calls may signal a defect or “bug” in the tracking system of a facilities-based carrier, just as similar data from Intermediate Carriers (see I.A above) would enable PSPs to identify problems in a SBR’s tracking system.

⁶ Mr. Gudino argues that lists of numbers dialed are useless without the associated call volumes. As APCC’s Petition makes clear, APCC has requested the Commission to require reporting of call volumes for uncompleted calls. APCC Petition at 20-21.

As another example, if local exchange carrier ("LEC") or PSP call detail records are available to identify calls dialed from payphones, the uncompleted call records of Completing Carriers (both facilities-based carriers and SBRs) can be critical in detecting tracking problems. LEC and PSP records, where available (and Intermediate Carrier records, in the case of a SBR), generally identify the date and time that toll-free numbers are dialed from payphones, but do not always make it possible to determine whether a call was completed to an end user. By comparing the LEC or PSP call records of calls dialed (but not necessarily completed) from a payphone with the Completing Carrier's lists of completed *and uncompleted* calls from the same payphone, it should be possible to determine the reason why the Completing Carrier did not identify particular calls as compensable – *i.e.*, whether the Completing Carrier identified the call (correctly or incorrectly) as an uncompleted call, or whether the Completing Carrier simply failed to identify the call at all as originating from the payphone. The calls that the Completing Carrier failed to identify at all are very likely to be completed, compensable calls, especially if LEC or PSP records indicate that they are long-duration calls.

C. The requirement for a facilities-based carrier to report calls delivered to SBRs does not remove the need for a facilities-based carrier to report uncompleted calls placed to end users

AT&T argues that the existing data reporting requirements are sufficient to protect PSPs, and that it would be "unnecessary and redundant" to require AT&T to provide additional information on uncompleted calls. *Id.*, ¶ 10. The existing data requirements, however, are focused primarily on enabling PSPs to verify payments from SBRs; they do little or nothing to help verify payments from *facilities-based carriers* for calls that facilities-based carriers complete to end users.

Noting that the revised rule requires *Intermediate Carriers* to report the total volumes of calls that the *Intermediate Carrier* delivers from each payphone to each SBR (Guerra Dec., ¶¶ 7-9), Mr. Guerra infers that PSPs can already obtain uncompleted call information because the *Intermediate Carrier's* reported call volumes can be compared with the SBR's report of completed call volumes "to determine the number of calls that were not eligible for payphone compensation." *Id.*, ¶ 9. The information provided by AT&T as an *Intermediate Carrier*, however, is *only* useful in verifying payments for calls handled by SBRs for whom AT&T is an *Intermediate Carrier*. AT&T's *Intermediate Carrier* reports provide no help at all in verifying payments for calls placed to *end users* for whom AT&T is the *Completing Carrier*. Accordingly, the uncompleted call information that PSPs seek from AT&T as a *Completing Carrier* is in no way duplicative of the information that AT&T already must provide as an *Intermediate Carrier*; in fact, as shown above, uncompleted call information is critical to assist PSPs in evaluating the accuracy of the compensation paid by AT&T and other facilities-based carriers in their role as *Completing Carriers*.⁷

⁷ In addition, as discussed in II.B above, the uncompleted-call records of SBRs would enable PSPs to identify call tracking errors that cannot be identified by

D. The Submissions Actually Confirm That Information on Uncompleted Calls Is Available

Although carriers have previously argued that they do not even record information about uncompleted calls, the instant ex parte submissions provide evidence that such information is in fact recorded and can be retrieved when necessary. Ms. Moore specifically acknowledges that carriers can retrieve uncompleted call data on an as-needed basis. Moore Dec., ¶ 13. Mr. Guerra also acknowledges that, “in the event of a legitimate dispute, AT&T will provide additional information,” which “may include” information on “if the call was completed or not.” Guerra Dec., ¶ 15. Given the importance of uncompleted call data in evaluating the accuracy of payments, the Commission should require Completing Carriers to maintain uncompleted call data in their compensation systems.

At a minimum, Completing Carriers should be required to maintain information on uncompleted access code calls (*i.e.*, calls placed through “platforms” using prepaid cards, calling cards, or collect or third party billing “platform”). Information on uncompleted access code calls is particularly important because access code calls generally have much lower completion ratios than subscriber toll-free calls; therefore, uncompleted call information is more likely to be of critical importance in verifying compensation for access code calls. Further, the fact that an access code call is initially “answered” by the call processing platform (where the caller receives a bong tone or prompt to dial the second “leg” of the call) means that it should be substantially easier for Completing Carriers to capture and maintain information about such calls, than about uncompleted subscriber toll-free calls, which are not “answered” at all.

To the extent that the Commission does not require Completing Carriers to maintain uncompleted call data in their compensation systems, it should at least require Completing Carriers to cooperate with PSPs in carrying out studies of uncompleted call patterns. Ms. Moore suggests that MCI would be willing to cooperate with PSPs “to devise a study to examine the calls paid versus expected calls.” Moore Dec., ¶ 13. This would be a useful step. In the event that the Commission does not require carriers to provide reports or maintain call verification data on uncompleted calls, it should require carriers to cooperate with PSPs in devising and carrying out studies of call completion patterns.

(Footnote Continued)

Intermediate Carrier data alone. Specifically, SBRs’ uncompleted call records combined with Intermediate Carrier records would enable PSPs to identify calls that a SBR completely failed to track (even as uncompleted calls).

CONCLUSION

The Commission should grant APCC's petition and rule that (1) Intermediate Carriers and Completing Carriers must include information on call duration in the verification information that is available to PSPs on request; and (2) Completing Carriers must provide reports and maintain call verification records on uncompleted calls.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert F. Aldrich". The signature is fluid and cursive, with the first name "Robert" and last name "Aldrich" clearly distinguishable.

Albert H. Kramer
Robert F. Aldrich

Enclosure

cc: Jeffrey Carlisle
Bill Dever
Darryl Cooper
Denise Coca